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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

[redacted]

OCT 31 2003

FILE: LIN 02 233 54493 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical diagnostic center. It seeks classification of the beneficiary as a trainee. The director determined that the training program would result in the beneficiary being involved in productive employment beyond that which is incidental to the training. The director found that the petitioner had not established that the training would benefit the beneficiary in pursuing a career outside the United States. The director also noted that the beneficiary is already state-licensed to work in the area of the training, and that the petitioner does not appear to have adequate manpower to provide the proposed training.

On appeal, counsel states that the petitioner submitted adequate evidence to support the petition and that the petitioner does have sufficient staff to provide the training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

> (ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
>
> (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

> (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;
>
> (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
>
> (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: copies of the beneficiary's I-94 cards, visa and passport; several letters from the petitioner; the beneficiary's certificates and license to practice as a physical therapy assistant; the beneficiary's diplomas and transcripts; the beneficiary's Forms I-20; the petitioner's brochures; the petitioner's bank statement; and the training schedule and training materials.

The director determined that the petitioner had not established that the training would benefit the beneficiary in pursuing a career outside the United States. In the petitioner's letter of support submitted with the petition, it said that the beneficiary would be able to "disburse her new acquired knowledge and skills to [the home country's] less sophisticated and educated physical therapy area of medicine [sic]." In the response to the request for evidence, counsel stated:

> There are no organizational and scientific based methods for providing rehabilitation services at the present time in [the beneficiary's home country]. . . . Currently there is an absence of not only scientific work outs, equipment necessary for proper therapy but also trained professionals that can made a difference by providing hand outs [sic] to patients regarding the rehabilitation treatment needed.

Neither the petitioner nor counsel has provided any evidence that the proposed training will assist the beneficiary in a career outside the United States. Indeed, given the apparent lack of structure within the field in the beneficiary's home country, it is not clear that the beneficiary can pursue this career there, and the statements provided do not indicate otherwise. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director also noted that the beneficiary is already state-licensed to work in the area of training. In the December 9, 2002 request for evidence, the director requested, "[A] statement which describes the beneficiary's present duties, and which describes all past employment. Include copies of the beneficiary's most recent payroll stub." Counsel responded, "The Beneficiary does not have duties at the present time. She is not working and is awaiting the response from the Service which would give her the permission to start her training." Counsel did not address the question of the beneficiary's past employment. The beneficiary received her Associate's degree in Physical Therapist Assisting Technology in May 2001. The petitioner submitted a Form I-120 for the beneficiary with a notation from the International Student Officer, dated February 9, 2001, stating, "Full-Time Optional Practical Training [sic] is recommended in Physical Therapy Assisting for twelve months, to begin no earlier than July 15, 2001 and ending twelve months later, or July 14, 2002." The petitioner also submitted a copy the beneficiary's Employment Authorization Card, valid from 7/15/01 through 7/14/02. This information implies that the beneficiary spent one year in some sort of practical training, which may have given her substantial expertise and training in the proposed field of training. The petitioner and counsel declined to respond to the director's request for details of the beneficiary's work history. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director found that the training program would result in the beneficiary being involved in productive employment beyond that which is incidental to the training. The director made a request for evidence to which counsel and the petitioner declined to respond. The director requested that the petitioner, "Submit a statement which clearly sets forth the proportion of time that will be devoted to productive employment. The statement should fully describe the amount to time that the beneficiary will devote to classroom training, and productive employment, in **each** phase of training." (Emphasis in original). This issue was not addressed in the response to the request for evidence. Again, reference is be made to 8 C.F.R. § 103.2(b)(14). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

The final reference in the director's denial is that the petitioner does not appear to have adequate manpower to provide the proposed training. The director did not request additional information regarding the petitioner's staffing structure or its ability to use regular staff to provide training; therefore, the director's remarks on this issue are withdrawn.

Beyond the decision of the director, the training is general in nature, without a fixed training schedule, objectives or means of evaluation. The training schedule submitted with the petition states:

> The first phase of the training includes course work. The second phase of the training program, [sic] the trainee will be placed, for specified periods of time, with on-going project teams to allow for 'on-the-scene' observation and question periods. Assignments are made to office personnel, medical assistants, physicians, physical therapist and alternative medicine specialist of our medical facility.

In response to the request for evidence, counsel breaks down the training somewhat. The schedule submitted reads, in part:

> July 1, 2002 to November 15, 2002—The Back, Neck, Jaw, and Shoulder. Supervisor: Brenton Hagen. Introduction to the Back, Neck, the Jaw and the Shoulder. Review, study and exam to be given at end of session. November 16, 2002 to January 15, 2002—The Elbow, Wrist and Hand. Supervisor: Yelena Guzauskava. Review of the Elbow, Wrist and Hand Mechanics. Review, study and exam to be given at end of session.

The proposal continues in this format. There is no detail about how the topics will be taught, how much of the training would be in the classroom and how much would be hands on training, or even how many hours each day the beneficiary would be spending in training. Counsel did include training materials for each segment, but there is still no detail regarding the training itself. The regulations clearly state that a training program cannot be approved if it deals in generalities with no fixed schedule, objectives, or means of evaluation. 8 C.F.R. § 214.2(h)(7)(iii)(A).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The

petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.